No. 83-1009

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ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

October Term, 1983

NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC.,
Petitioner,

vs.

THE BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW OF ALLEGHENY COUNTY; SCHOOL DISTRICT OF NORTH HILLS; TOWNSHIP OF ROSS; COUNTY OF ALLEGHENY and COMMONWEALTH OF PENNSYLVANIA,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI

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Question Presented

The Commonwealth of Pennsylvania provides under its General County Assessment Law a procedure for taxpayers and municipal bodies to appeal real estate property assessments entered by a local board. Any party deeming itself aggrieved by an assessment must appeal by petition to the Court of Common Pleas of the County wherein the property is situate. In the instant proceedings the Petitioner appealed a 1979 assessment entered upon a 236 unit apartment complex it owned. None of the severally named municipal bodies appealed the original assessment. After hearing on Petitioners request for reduction, the Court of Common Pleas of Allegheny County, Pennsylvania unilaterally raised the Petitioner's assessment $870,500.00. This correspondingly raised its 1979 tax obligation $73,799.04 beyond the original tax which had been paid. The question is thus phrased: Is it a taking of property without due process of law in contravention of the due process clause of the Fourteenth Amendment for a Court to unilaterally raise a property assessment in disposition of taxpayer's appeal seeking reduction when none of the taxing bodies which benefit from the disposition have pursued the statutorily mandated procedures of appeal that serve as notice of their intention to seek an increase. **Are the statutes as applied repugnant to the due process clause of the Fourteenth Amendment on the failure to provide the taxpayer with reasonable and adequate notice that the taxing bodies are seeking an assessment increase?**

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IN THE

Supreme Court of the United States

October Term, 1983

No._____

NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC.,

Petitioner,

vs.

THE BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW OF ALLEGHENY COUNTY; SCHOOL DISTRICT OF NORTH HILLS; TOWNSHIP OF ROSS; COUNTY OF ALLEGHENY and COMMONWEALTH OF PENNSYLVANIA,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

Opinions Below

The Order of the Supreme Court of Pennsylvania entered September 22, 1983 at proceedings No. 172 W.D. Allocatur Docket, 1983 is printed in the Appendix hereto, *infra*, page 1a. The Judgment and Opinion of the Commonwealth Court of Pennsylvania entered May 26, 1983 at proceedings No. 2534 C.D., 1981 is printed in the Appendix, hereto, *infra*, pgs. 2a-10a). The opinion and judgment of the Trial Court, the Court of Common Pleas of Allegheny County, Pennsylvania, entered September 22, 1981 at proceedings No. GD 80-24787 is printed in the Appendix, *infra*, pages 11-13.

Jurisdiction

The Judgment of the Supreme Court of Pennsylvania at proceedings No. 172 W.D. Allocatur Docket, 1983 (Appendix, *infra*, page 1a) was entered on September 22, 1983. Jurisdiction to the Supreme Court of the United States is invoked under 28 U.S.C. §1257(3).

Constitutions and Statutes Involved

This case involves the implicit due process provisions of Article I, Section I of the Constitution of the Commonwealth of Pennsylvania which in pertinent part provides:

> "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

This case also involves Section I of the Fourteenth Amendment of the Constitution of the United States.

This section reads as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, *without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws."

In addition the interpretation of three statutory provisions of the Laws of the Commonwealth of Pennsylvania are involved in the instant case; 72 P.S. §5020-518, 72 P.S. §5020-520, and 72 P.S. §5350. (The three statutes are stated in their entirety in the Appendix hereto, *infra* pages 20a-22a).

Statement of the Case

On October 6, 1980 the Petitioner initiated a taxpayer's appeal under the General County Assessment Law to the Court of Common Pleas of Allegheny County, Pennsylvania, requesting a devaluation of the assessment placed upon a nine building, 236 unit apartment complex, known as the Willow Tree Apartments and situate at 3500 Evergreen Road, Ross Township, Allegheny County, Pennsylvania. The appeal was from the 1979 assessment placed on the property by the Respondent, Board of Assessment Appeals and Review of Allegheny County. The assessment was set at $1,350,000.00 and was calculated upon a purported common ratio factor of 50% of a fair market value of $2,700,000.00. The Petition to the Court questioned the accuracy of the assessment, (a) stating it was in excess of true market value and (b) the common ratio factor

lacked uniformity in application throughout the county. With the exception of the County of Allegheny all the respective Respondent authorities entered appearances in contest to the tax appeal before the Common Pleas Court.[1] The County on December 9, 1980, petitioned the Court to intervene, alleging it had an interest in the outcome of the proceedings. By Order of Court dated December 18, 1980, the request of the County was granted and the County formally intervened into the proceedings as a party contestant to Petitioner's tax appeal. (The County neither requested nor was it granted leave to seek an increase or assessment greater than that first set by the Board of Assessment DK #2 and 3.)

The case thereafter was placed on the trial calendar and was set to be heard before the Honorable Francis A. Barry on July 31, 1981. Pending disposition of the taxpayer's appeal, property assessments for calendar years 1980 and 1981 were entered by the Board of Assessment, Appeals and Review. Based upon a newly adopted common ratio factor of 25% of the fair market value, Petitioner's apartment complex was re-evaluated and assessed at $1,426,500.00 for the 1980 and 1981 calendar years. (Reflecting a F.M.V. of $5,706,000.00.) By operation of law (72 P.S. 5452.11), the 1980 and 1981 assessments were placed in issue to the proceedings for disposition by the Court.

Oral testimony was submitted to the Court on July 31, 1981. After the testimony was closed, by Opinion and Order entered September 22, 1981 (Appendix pgs. 11a-13a)

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[1] The Commonwealth of Pennsylvania was not a party participant in the initial proceedings but has been added because the constitutionality of a Pennsylvania Statute is involved in the instant case.

the assessments for the three tax years were changed as follows: 1979 was raised from $1,354,500.00 to $2,225,000.00; 1980 was reduced from $1,426,500.00 to $1,187,500.00; and 1981 was reduced from $1,426,500.00 to $1,250,000.00. (Appendix pg. 13a.)

Believing itself to be an aggrieved party (the net effect of raising Petitioner's 1979 property taxes approximately $74,000.00) the Appellant timely lodged an appeal to the Commonwealth Court of Pennsylvania on October 6, 1981.

The appeal was consolidated with other proceedings pending before the Court at No. 781 C.D. 1982. After the Respondent taxing bodies had filed their responsive briefs, your Petitioner requested and was granted leave to file a Brief in Reply. (Appendix Pg. 14a-16a.) The Brief in Reply was directed solely to the issue of arguing holding contained in *Valley Forge Golf Club vs. Board for Assessment and Review of Montgomery County*, 3 Pa. Cmwlth. 644, 285 A.2d 213 (1971) be reversed as contrary to statutory interpretation and inapposite to principles of due process. (Appendix pg. 18a.) The consolidated appeals were argued on March 2, 1983. By Opinion and Order entered on May 26, 1983, the original adjudication of Judge Francis Barry was affirmed. (Appendix pgs. 2a-10a.) It is from this Opinion and Order that the Petitioner applied on June 24, 1983 for an Allowance to Appeal to the Supreme Court of Pennsylvania. As before the Commonwealth Court your Petitioner requested the Supreme Court of Pennsylvania to address the issue of the Constitutionality of the statute in its application as a denial of due process in the lower Courts' failure to adhere to statutory mandate concerning taxing body requisites of Appealing tax assessments and providing Petitioner with notice of an

intent to seek a tax assessment increase. (Appendix pg. 19a.) On September 22, 1983, the Supreme Court of Pennsylvania denied without comment the Petition for Allowance to Appeal. (Appendix pg. 1a.) It is from this disposition the instant case is brought before this court on Petition for Writ of Certiorari.

Reasons for Granting Writ

In the recent case of *Greene vs. Lindsey*, 456 U.S. 444, 72 L. Ed. 2d 249, 102 S. Ct. 1874 (1982) Justice Brennan, speaking for a majority of this Court stated that "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis vs. Ordean*, 234 U.S. 385, 394, 58 L. Ed. 1363, 34 S. Ct. 779 (1914). And this "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest," *Mullane vs. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 94 L. Ed. 865, 70 S. Ct. 652 (1950). . . ."An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is *notice reasonably calculated, under all the circumstances,* to apprise interested parties of the pending of the action and afford them an opportunity to present their objections." (pgs. 449-450.). . . ."This must be judged in the light of its practical application to the affairs of men as they are ordinarily conducted." *North Laramie Land Co. vs. Hoffman*, 268 U.S. 276, 69 L. Ed. 953, 45 S. Ct. 491 (1925).

The issue addressed to this Court in the instant case concerns the constitutionality of the appeal procedures outlined in the General County Assessment Law of Pennsylvania. Under the procedures (72 P.S. §5020-518), taxpayer has the statutory right to appeal to Court

property assessments established by a County Board of Property Assessment Appeals and Review. To perfect the appeal a taxpayer must:

> "Petition . . . setting forth the facts of the case" 72 P.S. §5020-518 (Appendix, Pg. 20a).

Under the statutory scheme the taxing bodies have the same right to appeal as the taxpayer. In pertinent part the statutes provide:

> "The Corporate authorities . . ., *shall* have the same right to appeal therefrom *in the same manner, subject to the same procedure,* and with like effect, *as if such* appeal were *taken by a taxable*" (emphasis added) 72 P.S. §5020-520 (Appendix, Pg. 22a).

As simple reading of the statutes indicates the filing of the Petitions is jurisdictional in nature, phrases the issues on appeal and gives statutorily mandated notice to the parties of their respective intentions. As written, your Petitioner does not dispute the statutory scheme is constitutionally sound. It is the interpretation and the application by the Pennsylvania Courts that fails to meet constitutional standards of due process. Your Petitioner pursued the legal redress afforded it by appealing its 1979 assessment. Although afforded an opportunity, none of the responding taxing bodies exercised the statutory right or fulfilled the mandatory procedure of perfecting an appeal in their own right. Irrespective of the clearly defined mandates of statute, the Pennsylvania Courts afforded the taxing bodies the position of appellants and raised the 1979 assessments. The Petitioner seeking a reduction of its 1979 assessment suffered a deprivation equivalent to $74,000.00 without notice, "reasonably calculated to apprise . . . and afford . . . an opportunity to present [its] objections.," *Greene, supra.* If, as here, a method of procedure is

mandated by the legislature, can the Courts unilaterally ignore the statutory scheme, nullify all requirements of notice and enter a decree which deprives a party participant of constitutionally protected entitlements. Your Petitioner thinks not. Evidently, the Pennsylvania Courts think otherwise, the instant case has re-affirmed a position first enumerated in an earlier precedent; *Valley Forge Golf Club, Inc. vs. Board for Assessment & Revision of Taxes of Montgomery County,* 3 Pa. Commnwlth. 644, 285 A. 2d 213 (1971) and irrespective of serious constitutional questions have refused to address the due process issue when presented. (It is to be noted that the two Appellate Courts have refused to address the due process issue although properly presented to them for review. Opinions appended hereto).

If the Petitioner had been given the notice required by statute an opportunity would have been available to withdraw the appeal or present evidence to contest the factual issue surrounding the purported 50% common level ratio applied to county wide assessments in 1979. (Even though property was purportedly assessed at 50% of F.M.V. in 1979 and 25% of F.M.V. in 1980 the original assessments from which the Petitioner appealed, *i.e.*, $1,354,500.00 and $1,426,500.00 respectively, had some resemblance of parody. Because no material change was made to the property during the two calendar years, it is evident that the 50% common level ratio figure of 1979 was a fallacious figure applied to all assessments in 1979). Without proper notice and opportunity to address this issue the court subsequently applied the 1979-50% common level ratio figure and raised Petitioner's 1979 assessment $870,500.00. This is after payments upon the original assessment had been made. The monetary equivalent is that your Petitioner is now obligated to pay $73,799.04 additional taxes for 1979.

This Honorable Court cannot be mindful that the procedures applied by the Pennsylvania Courts in assessment appeals achieve unconscionable results. When the taxpayer can suffer consequences as evidenced in the instant case a question of serious constitutional dimensions has arisen. Your Petitioner is a corporate entity and owner of a 236 unit apartment complex. It apparently has the economic power to litigate a tax appeal. Yet the average taxpayer is without the economic means to address a tax appeal to the extent the instant case was presented. If the Pennsylvania courts and the taxing bodies can circumvent the clear mandates of the statutes and in the myriad of statutory interpretation cause the uninformed tax payer to suffer a deprivation similar to that sustained here it is evident that Pennsylvania tax appeal procedure fails to meet constitutional approval.

Being a case of first impression and invoking a matter of constitutional dimensions the Petitioner, North Canton Enterprises of Pennsylvania, Inc. prays this Honorable Court issue a Writ of Certiorari to review the proceedings of this case and after submission of same, decree the application of the appeal procedures of the Penr ylvania General County Assessment Law unconstitutional and remand the case for reinstatement of the original 1979 assessment upon the property of the Petitioner.

Respectfully submitted,

PARIS ANDREW DIAMOND
Attorney for Petitioner

APPENDIX

Order of the Supreme Court of Pennsylvania

THE SUPREME COURT OF PENNSYLVANIA
Western District

Carl Rice, Esq.
Prothonotary
Irma T. Gardner
Deputy Prothonotary

801 City-County Building
Pittsburgh, Pa.
15219

(Stamp Illegible)
SEP 26

September 23, 1983

J. Keerington Lewis, Esquire
1040 Fifth Avenue
Pittsburgh, Pennsylvania 15219

P. Andrew Diamond, Esquire
1040 Fifth Avenue
Pittsburgh, Pennsylvania 15219

In Re: NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC., Petitioner v. THE BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW OF ALLEGHENY COUNTY, SCHOOL DISTRICT OF NORTH HILLS, TOWNSHIP OF ROSS, AND COUNTY OF ALLEGHENY
No. 172 W.D. Allocatur Docket 1983

Dear Mr. Lewis and Mr. Diamond:

This is to advise you that your Petition for Allowance of Appeal filed in the above-captioned case was denied on September 22, 1983.

CR/ss

Very truly yours,

CARL RICE
CARL RICE, ESQ.

cc: William W. Milnes, Esquire
Lee A. Donaldson, Esquire
William P. Bresnahan, Esquire
John M. Silvestri, Esquire
Honorable Francis A. Barry

Opinion and Order of the Commonwealth Court of Pennsylvania

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

No. 781 C.D. 1982

NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC.,

Appellant,

vs.

THE TOWNSHIP OF ROSS, *et al.*,

Appellees.

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

No. 2534 C.D. 1981

IN RE: APPEAL OF NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC. etc.,

NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC.,

Appellant.

Appendix—Opinion and Order of the Commonwealth Court of Pennsylvania.

BEFORE:
HONORABLE JAMES CRUMLISH, JR.,
President Judge
HONORABLE JOHN A. MacPHAIL, *Judge*
HONORABLE ALEXANDER F. BARBIERI, *Judge*

ARGUED: March 2, 1983

OPINION BY JUDGE MacPHAIL Filed May 26, 1983

North Canton Enterprises of Pennsylvania, Inc. (Appellant) has appealed from two orders of the Court of Common Pleas of Allegheny County. In the appeal docketed at No. 2534 C.D. 1981, Appellant challenges the trial court's disposition of its property tax assessment appeal for the 1979 tax year. The second appeal, docketed at No. 781 C.D. 1982, is from an order dismissing with prejudice a declaratory judgment petition filed by Appellant. The appeals have been consolidated for disposition by this Court.

Appellant is the owner of a nine building, multi-unit apartment complex located in the Township of Ross. At issue here is Appellant's tax assessment appeal from the 1979 assessment of its property at $1,354,500 by the Board of Property Assessment, Appeals and Review of Allegheny County (Board).[1] The assessed value was calculated using a common level ratio of 50%. Based on this tax assessment, the indicated fair market value of the subject property in 1979 was $2,709,000. Following a *de novo* hearing, the court of common pleas found a fair market value for the property of $4,500,000 which, of course, was in excess of that originally set by the Board. The Court also ruled that the 50% common level ratio should be applied to calculate assessed value. Appellant

has appealed the trial court's order and, in particular, challenges the court's fair market value finding for 1979.

Subsequent to its appeal from the trial court's order, Appellant filed a declaratory judgment petition with the common pleas court seeking a declaration on the following issue: May a taxing authority which does not itself appeal from a property assessment, nevertheless receive payment of additional taxes based upon a court-ordered increase in fair market value when the taxpayer has already paid taxes in the lesser amount originally claimed by the taxing authority? The Township of Ross and the School District of North Hills, named respondents below, filed preliminary objections to the petition which the court of common pleas sustained. Appellant perfected its second appeal to this Court from the order dismissing its declaratory judgment petition.

Turning first to the tax assessment appeal, Appellant contends that the court of common pleas was without authority to find a fair market value in excess of that set by the Board.[2] Appellant argues that where, as here, the taxing authorities fail to appeal a particular assessment,[3] the trial court is limited to either affirming the existing assessment or finding that the assessment is excessive and must be lowered.

We find our decision in *Valley Forge Golf Club, Inc. Tax Appeal*, 3 Pa. Commonwealth Ct. 644, 285 A.2d 213 (1971) to be controlling on this issue and, accordingly, reject Appellant's argument that *Valley Forge* should be overruled. In *Valley Forge* we concluded that where local taxing bodies have properly intervened in a tax assessment appeal, they are entitled to present evidence

on their own behalf including that supportive of a higher assessment value. We further concluded that since it was the trial court's statutory duty to determine the *actual* market value of the subject property, it could fix an assessment amount higher than that appealed from where such a valuation was supported by competent, credible and relevant evidence.

In the instant case, the County of Allegheny intervened before the trial court, as it was empowered to do, *Allegheny County, Southern District, Tax Assessment Appeal*, 7 Pa. Commonwealth Ct. 291, 298 A.2d 643 (1972), *rev'd on other grounds sub nom. Borough of Greentree v. Board of Property Assessments*, 459 Pa. 268, 328 A.2d 819 (1974), and presented evidence on its own behalf. It then became the trial court's duty to determine "on the basis of the competent, credible, and relevant evidence *produced by all parties*, what the fair market value of the property involved is." *Deitch Co. v. Board of Property Assessment*, 417 Pa. 213, 224, 209 A.2d 397, 403 (1965) (emphasis added). Appellant has not contended that the trial court's finding of fair market value is unsupported by competent, credible and relevant evidence. We, accordingly, conclude that the court had the authority in determining fair market value to set a value higher than that which Appellant appealed from.

Appellant next contends that the trial court judge erred in failing to recuse himself when requested to do so by Appellant's counsel. Appellant contends that the trial judge was prejudiced against its counsel and that the judge heard statements prejudicial to Appellant's case during settlement discussions. As a general principle, a

trial judge should recuse himself whenever he believes his impartiality may reasonably be questioned. *Smathers Appeal*, 35 Pa. Commonwealth Ct. 486, 386 A.2d 1080 (1978). If a judge, however, thinks he is capable of hearing a case fairly and without prejudice, his decision not to withdraw will ordinarily be upheld on appeal. *Commonwealth v. Darush*, 279 Pa. Superior Ct. 140, 420 A.2d 1071 (1980). The trial judge in the instant case decided, after extensive on record discussion with counsel, that he would be able to hear the case fairly and impartially. Our review of the record discloses no abuse of discretion on the part of the trial judge and his decision to decline recusal, accordingly, will not be disturbed.

Turning now to the trial court's dismissal of Appellant's declaratory judgment petition, Appellant claims that it is entitled to declaratory relief regarding the issue of whether it may be found liable for taxes over and above the amount it has already paid for the 1979 tax year in light of the fact that the taxing authorities involved did not formally request an increased assessment for Appellant's property. Appellant contends that this issue is separate and distinct from that involved in the tax assessment appeal docketed at 2534 C.D. 1981. We think, however, that the issue raised by Appellant in its declaratory judgment petition is, in essence, another attempt to challenge the court of common pleas' authority to raise its tax assessment for 1979. As such, we think the issue could be raised in the tax assessment appeal to this Court and that the declaratory judgment petition is barred by Section

7541(c)(3) of the Declaratory Judgments Act (Act), 42 Pa. C.S. §7541(c)(3), which provides as follows:

> *Exceptions.*—Relief shall not be available under this subchapter with respect to any:
>
> . . . .
>
> (3) Proceeding involving an appeal from an order of a tribunal.

While, as a general rule, the existence of an alternative remedy is not a ground for dismissal of a declaratory judgment petition, 42 Pa. C.S. §7537, where, as here, ancillary proceedings involving the same parties can be utilized to resolve the issues raised in a declaratory judgment petition we think Section 7541(c)(3) of the Act is applicable. *See Iannarone v. Springbrook Township*, 65 Pa. Commonwealth Ct. 42, 441 A.2d 810 (1982). We conclude that under Section 7541(c)(3) of the Act, the court of common pleas properly dismissed the declaratory judgment petition.[4]

Orders affirmed.

JOHN A. MacPHAIL
John A. MacPhail, *Judge*

Appendix—Opinion and Order of the Commonwealth Court of Pennsylvania.

FOOTNOTES

[1] The appeal also involved the assessments for the 1980 and 1981 tax years. Appellant, however, has only challenged the ruling of the court of common pleas regarding the assessed value of its property for 1979.

[2] Appellant does not challenge the precise valuation found by the trial court, but rather challenges the court's power to set any fair market value in excess of that set by the Board. We, accordingly, will not review the validity of the actual fair market value found by the trial court.

[3] Taxing authorities are given the right to appeal tax assessments by Section 520 of The General County Assessment Law, Act of May 22, 1933, P.L. 853, *as amended*, 72 P.S. §5020-520.

[4] While the common pleas court order does not specifically sustain the preliminary objection raising a question of jurisdiction based on Section 7541(c)(3) of the Act, the adopted opinion of the court does fully discuss and rely upon Section 7541(c)(3) to support its dismissal of the declaratory judgment petition. Moreover, both parties have argued the applicability of Section 7541(c)(3) in their briefs filed with this Court. We, accordingly, conclude that the issue is properly before us. Since we affirm the court of common pleas on the basis of Section 7541(c)(3) we need not discuss the other legal principles which were also relied upon by the court in support of its dismissal order.

Appendix—Opinion and Order of the Commonwealth Court of Pennsylvania.

ORDER

IN THE

COMMONWEALTH COURT OF PENNSYLVANIA

No. 781 C.D. 1982

NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC.,

Appellant,

VS.

THE TOWNSHIP OF ROSS, *et al.*,

Appellees.

IN THE

COMMONWEALTH COURT OF PENNSYLVANIA

No. 2534 C.D. 1981

IN RE: APPEAL OF NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC., etc.,

NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC.,

Appellant.

Appendix—Opinion and Order of the Commonwealth Court of Pennsylvania.

The orders of the Court of Common Pleas of Allegheny County, No. GD 82-00890 and No. GD 80-24787, dated May 25, 1982 and September 22, 1981, respectively, are hereby affirmed.

DATE: May 26, 1983

JOHN A. MacPHAIL
John A. MacPhail, *Judge*

Certified from the Record
May 26 1983
Francis C. Barbush
Chief Clerk

Opinion and Order of Court of Common Pleas of Allegheny County, Pennsylvania

IN THE

COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Civil Division
No. GD 80-24787

IN RE: APPEAL OF NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC., FROM THE ACTION OF THE BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW OF ALLEGHENY COUNTY, ON PROPERTY OWNED BY PETITIONER, SITUATE IN THE TOWNSHIP OF ROSS, ALLEGHENY COUNTY, PENNSYLVANIA.

FINDINGS OF FACT

BARRY, *J.*

The petitioner, North Canton Enterprises of Pennsylvania, has appealed from the assessment of the Board of Property Assessment, Appeals and Review of Allegheny County, of property of petitioner located at 205 Tally Drive, in the Township of Ross, Allegheny County, Pennsylvania. The appeal covers the years 1979 and 1980, and continues for the year 1981.

The assessment for the above-described property for the year 1979 is $1,354,500.00, and $1,426,500.00 for 1980-81.

Mr. Daniel Smith, Jr., a real estate broker and appraiser, testified on behalf of petitioner and stated that the fair market value of the subject property for the years 1980-81 was $3,177,300.00.

Mr. Leo B. Shapero, on behalf of the taxing bodies, testified that the fair market value of the property was as follows:

1979—$5,000,000.00
1980—$5,550,000.00
1981—$6,000,000.00

The president of North Canton Enterprises, of Pennsylvania, Inc., Mr. Aristotle Maragas, also testified that in his opinion the fair market value of this property was $2,032,300.00 in the year 1979 and $2,330,308.00 for the year 1980. However, what is most revealing to the court in this case is information contained on petitioner's Applications for Appeal. In the two Applications for Appeal the owner gave an opinion of fair market value of the property for 1979 of $2,100,000.00 and of $3,650,000.00 for 1980. However, the applications concede that costs of subsequent improvements after purchase of the land were $4,000,000.00 as of 1979 and $4,200,000.00 as of 1980. Also, it is represented that there is an outstanding mortgage in the amount of $3,750,000.00. The cost of land on the 1979 Application is listed as $125,000.00 and $175,000.00 on the 1980 Application.

After careful consideration of all testimony and evidence presented, the court finds the fair market value of the subject property on the dates indicated to be as follows:

January 1, 1979—$4,500,000.00. The common level ratio to be applied is 50%;

January 1, 1980—$4,750,000.00. The common level ratio to be applied is 25%;

January 1, 1981—$5,000,000.00. The common level ratio to be applied is 25%.

An appropriate order has been entered.

ORDER OF COURT

AND NOW, to-wit, this 22nd day of September, 1981, IT IS HEREBY ORDERED that the property of North Canton Enterprises of Pennsylvania, Inc., located at 205 Tally Drive, Ross Township, Allegheny County, Pennsylvania, had a fair market value on the dates indicated, as follows:

1. January 1, 1979—The fair market value is $4,500,000.00 and the assessment is to be determined by applying a common level ratio of 50%;
2. January 1, 1980—The fair market value is $4,750,000.00 and the assessment is to be determined by applying a common level ratio of 25%;
3. January 1, 1981—The fair market value is $5,000,000.00 and the assessment is to be determined by applying a common level ratio of 25%.

BY THE COURT,
/s/ BARRY, *J.*

Petition for Leave to File Reply Brief and Motion to Consolidate Appeals

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

No. 2534 C.D. 1981 and No. 781 C.D. 1982

NORTH CANTON ENTERPRISES OF PENNSYLVANIA,

Appellant,

vs.

THE BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW OF ALLEGHENY COUNTY; SCHOOL DISTRICT OF NORTH HILLS; TOWNSHIP OF ROSS and COUNTY OF ALLEGHENY,

Appellees.

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition and Motion of NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC. respectfully represents:

1. Your Petitioner is the Appellant in the two above-captioned appeals pending before the court.

2. The proceedings appearing at 2534 C.D., 1981 is a taxpayer appeal from the order entered September 22, 1981 establishing the taxable value for calendar years

1979, 1980 and 1981 upon real property owned by the Appellant and situate in Allegheny County, Pennsylvania.

3. All parties to the instant appeals have filed their briefs in furtherance of the appeals, the last being the Appellee's, NORTH HILLS SCHOOL DISTRICT and TOWNSHIP OF ROSS's brief filed November 12, 1982 for proceedings appearing at 2534 C.D., 1981.

4. In the brief described in paragraph 3 above the Appellees have cited the case *Valley Forge Golf Club, Inc. Tax Appeal*, 3 Pa. Com. Ct. 644, 285 A2d. 213 (1971) as controlling upon the major issues raised in the taxpayers appeal appearing at 2534 C.D., 1981. (*i.e.*, the authority of a Common Pleas Court to unilaterally raise an assessment in disposition of a taxpayer assessment appeal).

5. The Petitioner believes and avers that a thorough discussion of the holding of Valley Forge Golf Club Tax Appeal *supra*, is paramount for a proper disposition of its appeal appearing at 2534 C.D. 1981 and it is requested that leave be granted to file a responsive brief wherein Petitioner can argue that the holding of Valley Forge, *supra* be reversed as contrary to principals of statutory construction and due process.

6. Additionally, Petitioner requests this Honorable Court permit the two appeals above captioned to be consolidated for disposition. In furtherance thereof it is averred:

Appendix—Petition for Leave to File Reply Brief and Motion to Consolidate Appeals.

a. The parties to the two appeals are the same;

b. The appeal at 2534 C.D., 1981 concerns the 1979 tax assessment of the Petitioner's real property while the appeal at 781 C.D., 1982 concerns payment and discharge of the 1979 taxes which had been paid during the pendency of the original tax appeal before the Common Pleas Court. Although the issues vary the factual backgrounds are intertwined and it is proper the cases be considered together.

c. Consolidated disposition would save judicial time and expense and cause the cases to be properly presented.

WHEREFORE, the Petitioner, NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC. requests this Honorable Court enter and order pursuant to Rule 2113(d) Pa. R. of App. Proc. permitting Petitioner to file a Reply Brief at proceedings 2534 C.D. 1981, said brief to be filed within 15 days of the entry of the order. Additionally, Petitioner requests this court permit the appeals appearing at 2534 C.D., 1981 and 781 C.D., 1982 be consolidated for disposition.

Respectfully submitted,

LEWIS AND STOCKEY
P. ANDREW DIAMOND
P. Andrew Diamond
Attorney for Appellants

Appendix—Petition for Leave to File Reply Brief and Motion to Consolidate Appeals.

IN THE

COMMONWEALTH COURT OF PENNSYLVANIA

No. 2534 C.D. 1981

IN RE: APPEAL OF NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC. etc.,

NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC.,

Appellant.

No. 781 C.D. 1982

NORTH CANTON ENTERPRISES OF PENNSYLVANIA, INC.,

Appellant,

v.

THE TOWNSHIP OF ROSS *et al.*,

Appellees.

ORDER

NOW, December 16, 1982, upon consideration of appellant's petition for leave to file a reply brief and motion to consolidate appeals, said petition is granted, and the appellant shall file a reply brief within thirty (30) days of the date hereof.

Appendix—Petition for Leave to File Reply Brief and Motion to Consolidate Appeals.

Appellant's motion to consolidate the above appeals is hereby granted.

KALISH, *J.*
JACOB KALISH, *Senior Judge*

Certified from the Record
Dec 16 1982
Francis C. Barbush
Chief Clerk

STATEMENT OF THE QUESTION AS PRESENTED IN PETITIONER'S BRIEF TO COMMONWEALTH COURT OF PA.

SHOULD THIS COURT OVERRULE THE HOLDING ENUMERATED IN *VALLEY FORGE GOLF CLUB, INC. v. BOARD FOR ASSESSMENT & REVISION OF TAXES OF MONTGOMERY COUNTY,* 3 Pa. Cmwlth. 644, 285 A.2d 213 (1971), WHICH PERMITS THE COMMON PLEAS COURT TO INCREASE THE ASSESSMENT OF A TAXPAYER'S PROPERTY IN DISPOSITION OF A TAX APPEAL INITIATED SOLELY BY THE TAXPAYER AND TO WHICH THE CORPORATE BODIES HAVE APPEARED ONLY IN CONTEST. IS THE HOLDING AND ITS APPLICATION IN THE INSTANT CASE REPUGNANT TO STATUTORY INTERPRETATION AND A DENIAL OF DUE PROCESS IN VIOLATION OF ARTICLE I, SECTION I OF THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA.

ANSWER: AFFIRMATIVE.

QUESTION PRESENTED FOR REVIEW AS PRESENTED IN PETITION FOR ALLOCATUR TO PENNSYLVANIA SUPREME COURT

SHOULD THIS COURT OVERRULE THE HOLDINGS ENUMERATED IN *VALLEY FORGE GOLF CLUB, INC. vs. BOARD FOR ASSESSMENT & REVISION OF TAXES OF MONTGOMERY COUNTY,* 3 Pa. Cmwlth. 644, 285 A.2d 213 (1971) AND AS REAFFIRMED IN THE INSTANT CASE, TO THE EXTENT THEY PERMIT THE COMMON PLEAS COURT TO INCREASE THE ASSESSMENT OF A TAXPAYER'S PROPERTY IN DISPOSITION OF A TAX APPEAL INITIATED SOLELY BY THE TAXPAYER UNDER THE GENERAL COUNTY ASSESSMENT LAW 72 P.S. §5020-101 *in seq.* AND TO WHICH THE CORPORATE BODIES HAVE NOT APPEALED AND HAVE APPEARED ONLY IN CONTEST. ARE THE HOLDINGS AND THEIR APPLICATION UNDER THE CIRCUMSTANCES OF THE INSTANT CASE REPUGNANT TO STATUTORY INTERPRETATION AND A DENIAL OF DUE PROCESS IN VIOLATION OF ARTICLE I, SECTION I OF THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA.

ANSWER: AFFIRMATIVE.

Statutes

72 P.S. §5020-518. Appeal to court from assessments; collection pending appeal

Any owner of real estate or taxable property in this Commonwealth, who may feel aggrieved by the last or any future assessment or valuation of his real estate or taxable property, may appeal from the decision of the county commissioners, acting as a board of revision, or the board of revision of taxes, or the board for the assessment and revision of taxes, as the case may be, to the court of common pleas of the county within which such property is situated, and, for that purpose, may present to said court, or file in the prothonotary's office, within sixty days after the county commissioners, acting as a board of revision, or the board of revision of taxes, or the board for the assessment and revision of taxes, as the case may be, have held the appeals provided for by this or any other act of Assembly and acted on the said assessments and valuations, a petition signed by him, his agent or attorney, setting forth the facts of the case, and thereupon the court shall proceed, at the earliest convenient time to be by them appointed, of which notice shall be given to the county commissioners, acting as a board of revision, or the board of revision of taxes, or the board for the assessment and revision of taxes, as the case may be, to hear the said appeal, and the proofs in the case, and to make such orders and decrees touching the matter complained of as to the judges of said court may seem just and equitable, having due regard to the valuation and assessment made of other real estate in such county or city; the costs of the appeal and hearing to be apportioned or paid as the court may direct: Provided, however, That the appeal shall not prevent the collection of the taxes complained of, but in case the same shall be reduced, then the excess shall be returned to the person or persons who shall have paid the same:

And provided further, That the appellant may pay the amount of the tax alleged to be due by reason of the assessment appealed from to the tax collector under protest, in writing, in which case when the tax is paid over to the taxing district it shall be the duty of the tax collector to notify the taxing district of such payment under protest by delivering to it the protest in writing. Whereupon, the taxing district shall be required to segregate twenty-five per centum (25%) of the amount of the tax paid over and shall deposit the same in a separate account, in the depository in which the funds of the taxing district are deposited, and shall not be permitted to expend any portion of the segregated amount, unless it shall first petition the court alleging that such segregated amount is unjustly withheld. Thereupon the court shall have power to order the use by the taxing district of such portion of such segregated amount as shall appear to said court to be reasonably free from dispute, and the remainder of the segregated amount shall be held segregated by the taxing district pending the final disposition of the appeal. Provided further, that upon final disposition of the appeal the amount found to be due the appellant as a refund shall also be a legal set off or credit against any future taxes assessed against the appellant by the same taxing district, and where a taxing district alleges that it is unable to thus credit all of such refund in one year the court, upon application of either party, shall determine over what period of time such refund shall be made and shall fix the amount thereof which shall be credited in any year or years. This proviso shall be construed to apply to all refunds that are now due, or may hereafter become due, as the result of appeals from assessments that have not been finally determined or adjusted at the time this act takes effect, regardless whether there has

been a payment of any moneys into court or to the tax collector under written protest. 1933, May 22, P.L. 853, art. V, §518; 1935, July 12, P.L. 674, §1.

72 P.S. §5020-520. Appeals by municipalities

The corporate authorities of any county, city, borough, town, township, school district or poor district, which may feel aggrieved by any assessment of any property or other subject of taxation for its corporate purposes, shall have the right to appeal therefrom in the same manner, subject to the same procedure, and with like effect, as if such appeal were taken by a taxable with respect to his property.
As amended 1967, Dec. 14, P.L. §46, No. 369, §3; 1971, June 3, P.L. 134, No. 6, §1 (§509(a) (101)).

72 P.S. §53501. Appeals and interventions by corporate authorities

The corporate authorities of any borough, town, township, school, institution and poor district, and county, who may feel aggrieved by any assessment of property or subjects of taxation for its corporate purposes, shall have the right to appeal therefrom in entirety or by individual assessments in the same manner, subject to the same procedure, and with like effect as if such appeal were taken by a taxable with respect to his assessment, and in addition may take an appeal from any decision of the board or court of common pleas as though it had been a party to the proceedings before such board or court even though it was not such a party in fact. Such authorities may intervene in any appeal by a taxable under section ____ of this act[1] as a matter of right.
As amended 1967, Dec. 14, P.L. §51, No. 373, §3; 1968, June 25, P.L. §53, No. 132, §4; 1971, June 3, P.L. 133, No. 6, §____ (§509(a) (94)).